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Big Data in Insurance: Reducing Legal Risks

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Mayer Brown's Technology Transactions Practice

- More than 50 lawyers around the world focused on helping clients develop and manage relationships with suppliers of critical services and technology
- Experience in 400 critical services sourcing deals with a total contract value exceeding \$200 billion, including data, digital, outsourcing and software

Recognized Market Leader



"Band 1" ranking
in IT/Outsourcing for
14 consecutive years (*Chambers* 2004-2017)



Named "MTT Outsourcing Team of the Year"
in 2014 and ranked in the top tier from 2010 through 2016



Ranked as one of the top law firms 2009 - 2016 on World's Best Outsourcing Advisors list for The Global Outsourcing 100™



Named 2016 "Technology Practice Group of the Year"

"They are very good at being able to communicate and synthesize information in a useful and easily understandable way."

~ *Chambers USA 2016*

"They're very practical in terms of trying to identify solutions and giving very good advice on areas where it's reasonable for us to compromise or, alternatively, where to hold our ground."

~ *Chambers USA 2015*

"An excellent team of people for outsourcing agreements globally - pragmatic in their approach, with a wealth of experts they can call on."

~ *Chambers Global 2014*

"Their knowledge in this area is tremendous. They know us so well they blend into our deal teams and become a natural extension to our in-house team."

~ *Chambers USA 2014*

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Mayer Brown's Insurance Industry Group

- More than 100 lawyers around the world that represent insurers and reinsurers, as well as brokers, banks, and investors, in a range of litigation and transactional matters

Recognized Market Leader



Global Rankings in Insurance

Ranked in the Global-wide, USA Nationwide, New York, Illinois, California, Latin America, UK and Asia-Pacific tables



Global Rankings in Insurance

Ranked in United States, London, Hong Kong and Brazil

Thought Leadership



Mayer Brown's Global Insurance Industry Year in Review summarizes many of the key transactions and regulatory developments that took place during 2016 in the United States, Bermuda, Europe, Asia and Latin America.

"Clients say: 'They are excellent. They have a lot of good lawyers with really sharp insurance expertise who provide actionable advice.'"

~ Chambers USA 2017

"Clients confirm that this is a 'very responsive team that can also bring in subject matter experts when we need them,' as well as being 'very well regarded in the market.'"

~ Chambers USA 2017

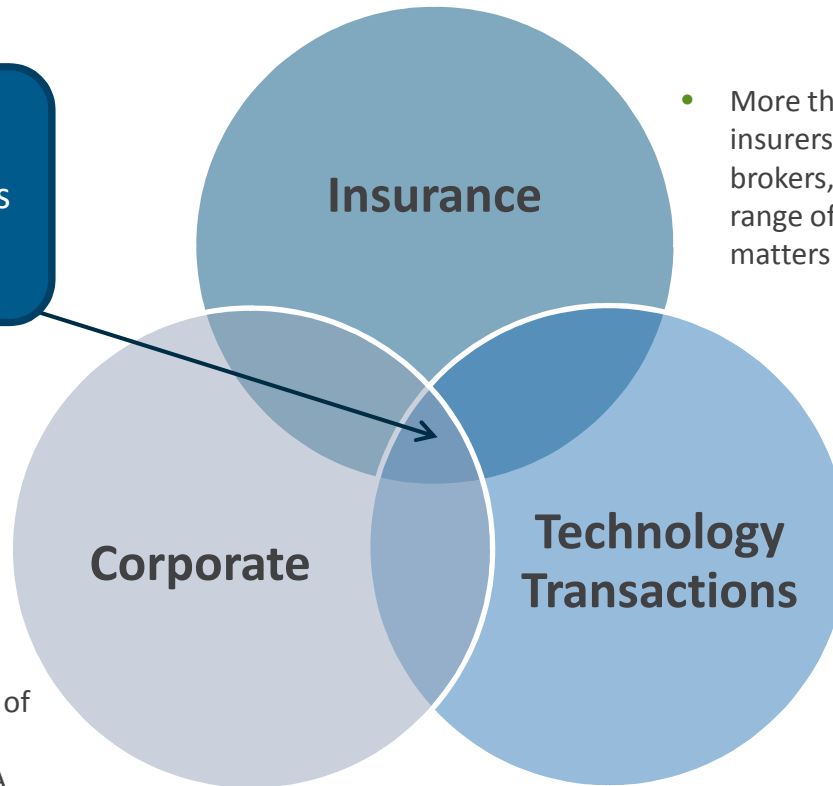
"A well-rounded practice, offering considerable transactional expertise covering not only insurance M&A, but also a broad spectrum of other areas, including insurance-linked securities, structured reinsurance transactions and pension de-risking. Also counsels clients on issues such as tax compliance and cybersecurity matters."

~ Chambers USA 2016

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Mayer Brown's Focus on InsurTech

Well-rounded capabilities from the deal management and technology perspectives within the context of the insurance industry

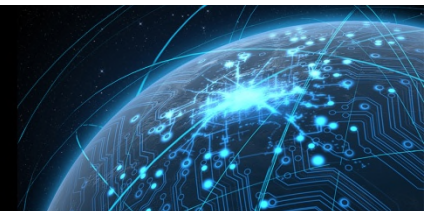


- More than 300 Corporate lawyers with experience advising clients on a variety of high-profile strategic transactions, including M&A and VC investments

- More than 100 lawyers that represent insurers and reinsurers, as well as brokers, banks, and investors, in a range of litigation and transactional matters

- More than 50 lawyers focused on helping clients improve their business operations by sourcing services and technology

Overview



- Larger volumes of data and better analytical tools are increasing business interest in new ways to use data
- As an insurance company, you face critical legal risks in:
 - Using data that you create and/or collect
 - Using data licensed from outside
 - Using robotic process automation (RPA), artificial intelligence (AI) and other advanced data analytic tools to process data
 - Monetizing data through licensing and partnering
- Acting now can reduce “big data” risk



LEGAL RISKS IN USING DATA THAT YOU CREATE OR COLLECT TO RUN YOUR BUSINESS ON YOUR SYSTEMS

Key Compliance Risks

- Information Governance
- Data Privacy
- Data Security
- Data Transfer
- Anti-discrimination Laws



Key Contract Risks

- Data has little protection under intellectual property laws
 - Data is not protected by copyright in the United States (*Fiest*)
 - Thus, strong contract rights are critical for preserving exclusive rights or competitive advantage
- Contracts with outsourcers, cloud providers and others who help to run your company may leak data rights
- Many contracts include stealthy out-licenses, such as:
 - “we may use data that you provide to use to improve our services and for other business purposes”
 - “you agree to provide us copies of any data that you possess regarding ...”



How These Risks are Changing

- There are increasing numbers of data scientists, often with little legal, compliance, or information governance involvement
- Each data element is copied into increasing number of databases
- Data flows are becoming harder to map
- Data integration is becoming more complex and failure-prone
- Technology often overcomes barriers designed for compliance
- Regulation is increasing
- Others increasingly want access to your data
- Contracting for outcomes is becoming more difficult





ADDED LEGAL RISKS IN USING LICENSED DATA

Data Licenses are Surprisingly Common

- Contracts with customers, employees, brokers and marketing channels
- Contracts with data aggregators or resellers
- Contracts with insureds, brokers and other common counterparties
- Sourcing agreements where data accompanies products or services
- Strategic alliance and joint venture agreements
- Research and development agreements



Additional Key Risks in Using Licensed Data

- Data provenance is easy to lose
- Data is hard to trace in systems
- Derived data and metadata are grey zones
- Data scientists are trained to find data and use it, not to find data licenses and comply with them
- Data licensors are often more sophisticated than data licensees



Top 10 Issues in Data Licenses



1. Scope

2. Users

3. Purpose

4. Term and Termination

5. Retention

6. Restrictions

7. Confidentiality, Privacy
and Security

8. Quality

9. Rights

10. Liability



ADDED LEGAL RISKS IN PROCESSING DATA USING ADVANCED DATA ANALYTIC TOOLS

Additional Key Data Risks with Big Data Tools on Your Network



- Software being licensed on the basis of data use
- Inability to extract derived data, metadata, and “learning” from the tool
- Lack of commitment by tool provider to maintaining the tool
- Exceeding your rights in the data by using the tool
- Information governance risks, including:
 - Inability to preserve, produce and timely destroy data stored in the tool
 - Tool being used by plaintiffs in litigation
- Inadequate controls over data use
- Inability to explain how you made coverage decisions



Additional Key Data Risks with Big Data Tools Delivered through the Cloud

- Digital services not complying with laws applicable to you
- Digital services not complying with your obligations under contract
- Data security breaches for tool provider
- Losing value by granting licenses or ownership
- Tool provider “learning” from your data or activity on the tool
- Your data auctioned in provider’s bankruptcy

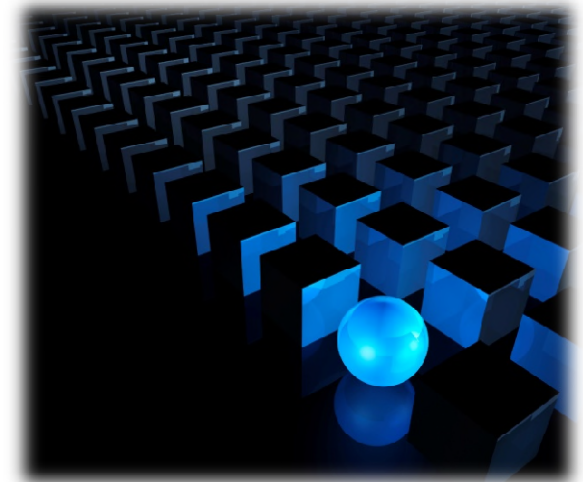




ADDED LEGAL RISKS IN LICENSING DATA AS A BUSINESS

Additional Legal Risks from Licensing Data

- Breach by licensees of your promises to your data sources
- Breach of the data license
- Delivering more data than you intended to deliver
- Confidentiality, privacy or data security breaches by licensees
- Your data auctioned in licensee's bankruptcy





ADDITIONAL RISKS IN PARTNERING IN INSURTECH

Possible Partnering Deal Structures

- Services arrangements (“powered by”)
- Alliance
- Joint venture
- Investment
- In-House accelerator
- Acquisition or in-house start-up



Additional Legal Risks

- Risks of collaborations generally
- Giving up your source of value in the pilot phase or otherwise losing the “race to learn”
- Giving up not only data access but also domain knowledge
- Exclusive relationships that limit your agility
- Responsibility for partner’s violation of laws
- Responsibility for partner’s breaches of your promises to data sources





WHAT TO DO NOW?

Today's Data Strategy Requires New Legal Advice



- The data team is not inclined on its own to the optimal legal result
- The efforts to monetize data or data-enabled services are turning data strategy from a back-office technical function to a mission-critical driver of legally complex transactions and customer experience



Steps to Take



1. Be part of your big data strategy team
2. Know your legal and contractual obligations
3. Learn your data flows and anticipate future strategies/uses
4. Obtain consents and licenses as needed for future intended uses
5. Understand the legal and contractual risks and address them proactively
6. Bolster compliance measures for future growth
7. Review and update information governance and records retention policies
8. Treat data integration and analysis contracts, deals and ventures as high-risk and strategic

Questions?

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